



**In re Estate of DNG (Miscellaneous Application E266 of 2022)  
[2023] KEHC 18687 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18687 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**MISCELLANEOUS APPLICATION E266 OF 2022**

**PM NYAUNDI, J**

**MAY 19, 2023**

**IN THE MATTER OF GUARDIANSHIP & MANAGEMENT OF THE  
ESTATE OF DNG UNDER SECTION 26(1) AND SECTION 29 OF  
THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

**IN THE MATTER OF**

**PWG ..... 1<sup>ST</sup> PETITIONER  
LWG ..... 2<sup>ND</sup> PETITIONER**

*(Petition for Guardianship for DNG and management of her estate under section  
26(1) and section 29 of the Mental Health Act, Cap 248 of the Laws of Kenya)*

**JUDGMENT**

1. The Applicants herein have presented Chamber Summon Application dated 13<sup>th</sup> December 2022 seeking to be appointed as Guardians of the Subject, DNG and to be appointed managers of her estate.
2. The Application is supported by the Affidavit of the Applicants sworn on the 12<sup>th</sup> December 2022. The Applicants are the daughters of the Subject.
3. Both the Applicants testified in Court. It was their testimony that the Subject is well advanced in years and has been diagnosed with dementia and is generally of poor health. She is currently bed ridden and blind and totally dependent on her care givers. Because of this she is unable to manage her affairs.
4. The other Siblings RTG and WG sworn a joint affidavit on 13<sup>th</sup> December 2022, in support of the Application and both attended court. They both confirmed that the subject is critically ill and because of the dementia she is unable to manage her affairs.
5. Both RTG and WG consent to the appointment of the Applicants as guardians of the subject and managers of her estate.



6. The Applicants seek the orders so that they are able to preserve the property of the subject. There is ongoing litigation at the Business Premises Rent Tribunal at Nairobi, Tribunal Case No. E1010 of 2022, where the subject is the Defendant. The order of Guardianship will enable the Applicants safeguard the interest of the Subject.
7. The Applicants estimates that the medical costs of the Subject are in the range of Kshs. 200000 per month. The Applicant's require to be appointed managers to the estate to enable them access the funds in the Subject's bank account at Equity Bank Limited, Account name DNG and Account No. xxxx.
8. The Subject is also the owner of LR No. xxxx and the orders for management are sought so as to preserve the property of the Subject.
9. The Subject was examined by Dr. E W Nafula, palliative care & Pain Management Specialist, who has prepared a medical report dated 24<sup>th</sup> October 2022, that states as follows: -

The above named is a patient on follow up in my clinic. She is known to have dementia, hypertension, diabetes mellitus type II and recurrent ovarian carcinoma. She has had surgery chemotherapy and radio therapy. She now remains on follow up and oral medication at home. I have reviewed her on 20/12/22 and she is in stable condition.

Her vital signs on examination were fairly table with BP of 130/90 mmHg PR of 80 b/min SPO2 of 99% on room air and Temp of 36.4 degrees Celsius. She is on palliative care and continues with treatment on analgesics, hypoglycemic, antihypertensives and medication to alleviate the symptoms of dementia.

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10. The Court had an opportunity to observe the Subject on the virtual platform and noted that she was non-responsive in a hospital bed that the family had set up at home.
11. Section 25 of the *Mental Health Act*, cap 248 Laws of Kenya provides for the circumstances under which a court may make orders for Guardianship of a subject (patient) and the management of their affairs as follows: -

" order for custody, management and guardianship" -

(1) The court may make orders-

- a) for the management of the estate of any person suffering from mental disorder and
- b) for the guardianship of any person suffering from mental disorder by any near relative or by any other Suitable person.

12. I have carefully considered this Application, the Affidavits and reports filed in court. I am satisfied that the subject is a person suffering from a mental disorder and is incapable of managing her own affairs.
13. Accordingly, the Petition is allowed and
  - a. The 1<sup>st</sup> and 2nd Applicant (namely PWG and LWG) are appointed as Guardian to DNG
  - b. The 1<sup>st</sup> and 2nd Applicant (namely PWG and LWG) are appointed Manager of the Estate of DNG



- c. As managers the 1<sup>st</sup> and 2<sup>nd</sup> Applicant are granted access to the Subject's Account at Equity Bank Limited, Account name DNG and Account No. xxxx.
  - d. Pursuant to this appointment the 1<sup>st</sup> and 2<sup>nd</sup> Applicant shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging DNG
  - e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Petitioners shall cause the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate of DNG
  - f. As Manager of the Estate of DNG the 1<sup>st</sup> and 2<sup>nd</sup> Applicant may dispose of the property only with the sanction of the court.
  - g. The matter will be mentioned before court on 6th December 2023 to confirm compliance
14. No order as to costs

It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY, 2023.**

**P M NYAUNDI**

**JUDGE**

In the presence of:

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Advocates for the Petitioners

Karani Court Assistant

